

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BARRY LAMON, No. CIV S-03-0423-FCD-CMK-P

Plaintiff,

vs. ORDER

C.K. PLILER, et al.,

Defendants.

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff's motion for an extension of time (Doc. 89), filed on February 13, 2006.

On January 20, 2005, the court directed plaintiff to file a fourth amended complaint within 30 days. Plaintiff now seeks a 30-day extension of that deadline. Good cause appearing therefor, the request will be granted. Plaintiff is warned that failure to comply with the court's orders to file a fourth amended complaint within the time provided in this order may result in dismissal of this action for lack of prosecution and failure to comply with court orders and rules. See Local Rule 11-110.

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1 Also pending before the court is defendants' motion for a protective order (Doc.
2 97). Specifically, defendants seek an order striking from the court's file recently-served and
3 filed discovery requests, and relieving them of any obligation to respond at this time.
4 Defendants argue that, because no operative complaint is on file given the dismissal of the third
5 amended complaint, discovery is not appropriate at this time. The court agrees and concludes
6 that plaintiff's discovery is premature. Once he has complied with the court's orders by filing a
7 fourth amended complaint discovery will be appropriate, but not before.

8 Also pending is plaintiff's motion for the appointment of counsel (Doc. 91). The
9 United States Supreme Court has ruled that district courts lack authority to require counsel to
10 represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist. Court, 490 U.S.
11 296, 298 (1989). In certain exceptional circumstances, the court may request the voluntary
12 assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935 F.2d 1015,
13 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the
14 present case, the court does not find the required exceptional circumstances.

15 Plaintiff has also requested a court-appointed expert witness to testify at any
16 hearing regarding his pending request for injunctive relief (Doc. 92). That request is denied
17 without prejudice to renewal should this court set a hearing.

18 Finally, plaintiff's motion regarding issuance of subpoenas (Doc. 88) is denied.
19 The court will issue subpoenas, as appropriate, after plaintiff files a fourth amended complaint.

20 Accordingly, IT IS HEREBY ORDERED that:

- 21 1. Plaintiff's motion for an extension of time is granted;
- 22 2. Plaintiff shall file a fourth amended complaint within 30 days of the date
23 of service of this order;
- 24 3. Defendants shall file a response to plaintiff's fourth amended complaint
25 within 20 days of the date of service thereof;

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1 4. Defendants' motion for a protective order is granted;

2 5. Defendants shall not be required to respond to any discovery requests
3 served to date until after the court determines that discovery shall be re-opened;

4 6. Plaintiff's discovery requests, filed with the court on February 23, 2006
5 (Docs. 93 & 94), are stricken;

6 7. Plaintiff's motion for appointment of counsel is denied;

7 8. Plaintiff's motion for a court-appointed expert witness is denied; and

8 9. Plaintiff's motion for issuance of subpoenas is denied.

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10 DATED: March 21, 2006.

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12 CRAIG M. KELLISON
13 UNITED STATES MAGISTRATE JUDGE